

103D CONGRESS  
1ST SESSION

# S. 989

To amend the Airport Noise and Capacity Act of 1990 to provide emergency relief to the United States airline industry by facilitating financing for investment in new aircraft and by encouraging the retirement of older, noisier, and less efficient aircraft.

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## IN THE SENATE OF THE UNITED STATES

MAY 19 (legislative day, APRIL 19), 1993

Mr. GORTON (for himself, Mr. STEVENS, and Mr. PRESSLER) introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

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## A BILL

To amend the Airport Noise and Capacity Act of 1990 to provide emergency relief to the United States airline industry by facilitating financing for investment in new aircraft and by encouraging the retirement of older, noisier, and less efficient aircraft.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

### 3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Aviation Industry Re-  
5 vitalization Act of 1993”.

### 6 **SEC. 2. DECLARATION OF POLICY.**

7 Congress finds and declares the following:

1           (1) The United States commercial airline indus-  
2           try is currently suffering severe financial distress.

3           (2) Sustained record losses and excessive debt  
4           burdens are causing air carriers to cancel new air-  
5           craft options and orders which, in turn is threaten-  
6           ing the economic viability of the United States aero-  
7           space manufacturing industry.

8           (3) Many air carriers are increasingly unable to  
9           obtain financing at reasonable interest rates for pur-  
10          chasing new equipment.

11          (4) The inability of many air carriers to acquire  
12          new, quieter, more fuel efficient Stage 3 aircraft  
13          may jeopardize the planned phaseout of noisier stage  
14          2 aircraft.

15          (5) The national goal of conserving scarce natu-  
16          ral resources and the airline industry goal of reduc-  
17          ing soaring fuel costs would both be enhanced by in-  
18          creasing the average fuel-efficiency of aircraft fleets.

19          (6) States and local communities, the traveling  
20          public, aerospace manufacturing companies and  
21          workers, airline employees, and airline shareholders  
22          would all benefit from stronger, healthy air carriers  
23          operating modern, fuel-efficient, quieter aircraft.

24          (7) Prudent investment to facilitate moderniza-  
25          tion of the industry's aircraft fleet can provide vi-

1       tally needed economic stimulus for carriers and man-  
2       ufacturers and will ensure that both industries re-  
3       main competitive into the next century.

4           (8) A revolving fund should, therefore, be estab-  
5       lished for the purpose of carrying out a Federal loan  
6       guarantee program to support the financing of new  
7       aircraft in a way that assures the phasing out of less  
8       fuel-efficient, noisier, and older aircraft at the same  
9       time.

10   **SEC. 3. AUTHORIZATION TO GUARANTEE FINANCING OF**  
11           **NEW AIRCRAFT.**

12       The Airport Noise and Capacity Act of 1990 (49  
13   App. U.S.C. 2151 et seq.) is amended by adding at the  
14   end the following new section:

15   **“SEC. 9310. FINANCING OF NEW AIRCRAFT.**

16       “(a) AUTHORIZATION OF LOAN GUARANTEE PRO-  
17   GRAM.—The Secretary is authorized to guarantee loans  
18   for the financing of new aircraft for use by air carriers  
19   that meet the terms and conditions set forth in subsection  
20   (d) and that agree to pay (directly if the carrier is the  
21   loan guarantee recipient, or indirectly if another person  
22   is loan guarantee recipient) subsidy fees, annual adminis-  
23   trative fees, and surcharges assessed under subsection (g).  
24   Subject to subsection (d), such guarantees may be made  
25   with respect to loans to an air carrier that will use such

1 new aircraft or loans to a person purchasing such new air-  
2 craft for lease to and use by an air carrier.

3 “(b) ESTABLISHMENT OF FUND.—There is estab-  
4 lished in the Treasury a fund, to be known as the ‘New  
5 Aircraft Guarantee Program Fund’, for the purpose of  
6 carrying out the loan guarantee program authorized by  
7 subsection (a). The Fund shall consist of amounts paid  
8 for subsidy fees, annual administrative fees, and sur-  
9 charges required under subsection (g). Amounts in the  
10 Fund shall be available to the Secretary without further  
11 appropriations to carry out the purposes of the Fund and  
12 shall remain available until expended.

13 “(c) INITIAL AUTHORIZATION.—There are author-  
14 ized to be appropriated for deposit in the Fund such sums  
15 as are necessary for the Secretary to pay the initial admin-  
16 istrative expenses of the loan guarantee program under  
17 this section. Within 2 years after such an appropriation,  
18 the Secretary shall ensure that an amount from the Fund  
19 equal to the appropriated amount, together with interest  
20 thereon, is deposited in the treasury as miscellaneous  
21 receipts.

22 “(d) TERMS AND CONDITIONS.—A loan guarantee  
23 under this section shall be subject to the following terms  
24 and conditions:

1           “(1) The loan guarantee must lead to the deliv-  
2           ery of new aircraft to an air carrier certificated  
3           under part 121 of title 14, Code of Federal Regula-  
4           tions, and such delivery shall occur no later than  
5           December 31, 1999.

6           “(2) The loan guarantee must be made for the  
7           purpose of financing the acquisition of new aircraft  
8           that comply with stage 3 noise standards.

9           “(3) The loan guarantee shall only be available  
10          for the purchase of new aircraft from companies  
11          that both—

12               “(A) publish independently audited finan-  
13               cial disclosure information and financial results;  
14               and

15               “(B) also are domiciled in countries that  
16               comply with all major international agreements  
17               governing aerospace trade, including but not  
18               limited to the GATT Civil Aircraft Agreement,  
19               the GATT Subsidies Code, the United States-  
20               European Community bilateral aircraft agree-  
21               ment, the OECD Large Aircraft Sector Under-  
22               standing, and bilateral air services agreements  
23               with the United States.

24           “(4) In the case of any air carrier taking deliv-  
25          ery of a new aircraft financed under this section

1       which owns or operates either aging aircraft or  
2       Stage 2 aircraft, such air carrier as borrower or les-  
3       see must, except as provided in paragraph (5), agree  
4       that no later than the sixtieth day after the aircraft  
5       being financed is placed on the air carrier's oper-  
6       ations specifications under part 121 of title 14, Code  
7       of Federal Regulations, or December 31, 1999,  
8       whichever occurs first, it will remove from service  
9       within the contiguous United States—

10               “(A) the number of aging aircraft or Stage  
11               2 aircraft which, in the aggregate and pursuant  
12               to rules promulgated by the Secretary, are cer-  
13               tified as equaling or exceeding 200 percent of  
14               the number of seats (or in the case of all-cargo  
15               aircraft 200 percent of cargo capacity) of the  
16               new aircraft being financed; or

17               “(B) all of its remaining aging aircraft and  
18               Stage 2 aircraft,

19       whichever number of aircraft is less.

20               “(5) When an air carrier described in para-  
21               graph (4) is taking delivery of only all-cargo aircraft,  
22               the carrier may, in lieu of removing Stage 2 all-  
23               cargo aircraft from service, modify on or after April  
24               15, 1993, such Stage 2 aircraft in order to meet  
25               Stage 3 noise standards on the same number of such

1       Stage 2 aircraft that otherwise would have had to be  
2       removed from service under paragraph (4); except  
3       that such modified aircraft must remain configured  
4       for all-cargo service and shall not be converted to  
5       passenger-cargo combination service.

6           “(6) Each aircraft removed from service by an  
7       air carrier under paragraph (4) shall be taken off  
8       the registry of certificated aircraft by the Secretary  
9       unless the air carrier continues to use such aircraft  
10      solely outside the contiguous United States and may  
11      not subsequently be registered in the United States;  
12      except that—

13           “(A) the Secretary may continue to keep  
14      an aircraft on the registry of certificated air-  
15      craft if such aircraft is not based in any of the  
16      several States of the United States and is en-  
17      gaged in common carriage entirely outside the  
18      several States; and

19           “(B) in a case where the aircraft removed  
20      from service is owned by a person not affiliated  
21      with such air carrier and was operated by such  
22      air carrier under lease on or before April 1,  
23      1993, the Secretary may continue to keep such  
24      aircraft on the registry of certificated aircraft if  
25      such owner brings such aircraft into compliance

1           with Stage 3 noise standards prior to its lease  
2           or sale to another air carrier or lessor.

3           “(7) An air carrier which is to take delivery of  
4           a new aircraft financed under this section must war-  
5           rant that it did not after April 1, 1993, and will not  
6           on and after the date of enactment of this section,  
7           place in service any aging aircraft or Stage 2 air-  
8           craft to its fleet, except—

9                   “(A) as incidental to a merger with or ac-  
10                  quisition of another air carrier that as of April  
11                  1, 1993, was certificated under part 121 of title  
12                  14, Code of Federal Regulations;

13                  “(B) as incidental to the purchase of a  
14                  route or routes and necessary associated assets;

15                  “(C) in the case of aircraft that the air  
16                  carrier has agreed to lease pursuant to a signed  
17                  term sheet executed no later than April 30,  
18                  1993; or

19                  “(D) for the provision of air transportation  
20                  solely outside the contiguous United States.

21           “(8) An air carrier’s violation of the warranty  
22           under paragraph (7) shall constitute a revocation of  
23           all outstanding loan guarantees under this section  
24           that were made for the purpose of financing delivery  
25           of new aircraft to such air carrier.



1           “(9) The Secretary may not grant a waiver, to  
2           any air carrier that takes delivery of an aircraft fi-  
3           nanced by a loan guarantee under this section, that  
4           would allow such air carrier to operate Stage 2 air-  
5           craft beyond December 31, 1999, in interstate air  
6           transportation.

7           “(e) REGULATIONS.—No later than sixty days after  
8           the date of enactment of this section, the Secretary shall  
9           promulgate regulations implementing the loan guarantee  
10          program authorized by this section.

11          “(f) FIDUCIARY DUTIES OF SECRETARY.—To imple-  
12          ment this section, the Secretary—

13               “(1) shall apply reasonable and prudent fidu-  
14               ciary standards in determining whether to make any  
15               specific loan guarantee, and is authorized to take  
16               such action as may be appropriate to enforce any  
17               right accruing to the United States or any officer or  
18               agency thereof as a result of making a loan guaran-  
19               tee under this section;

20               “(2) shall make loan guarantees on rates,  
21               terms, and conditions which, in the judgment of the  
22               Secretary, offer reasonable assurance of repayment;

23               “(3) may require that loans guaranteed under  
24               this section be secured by the aircraft being fi-  
25               nanced, to provide sufficient collateral; and

1           “(4) may not guarantee a loan amount that is  
2           more than 85 percent of the manufacturer’s price to  
3           the air carrier of the aircraft being financed.

4           “(g) ASSESSMENT OF FEES.—

5           “(1) IN GENERAL.—A loan guarantee under  
6           this section shall remain in effect only so long as the  
7           loan guarantee recipient pays the subsidy fee as-  
8           sessed under paragraph (2), any annual administra-  
9           tive fee assessed under paragraph (3), and any sur-  
10          charge assessed under paragraph (4).

11          “(2) SUBSIDY FEE.—For each loan guarantee  
12          under this section, the Secretary shall assess and  
13          collect a subsidy fee from the loan guarantee recipi-  
14          ent that is equal to the cost, as defined by section  
15          502(5) of the Federal Credit Reform Act of 1990 (2  
16          U.S.C. 661a(5)), of such guarantee.

17          “(3) ANNUAL ADMINISTRATIVE FEE.—Each  
18          year the Secretary shall assess and collect an admin-  
19          istrative fee for each loan guarantee under this sec-  
20          tion. Such fees shall be set at a level adequate to  
21          cover anticipated expenses for administering the loan  
22          guarantee program authorized under this section.

23          “(4) ADJUSTMENTS.—After completion of each  
24          fiscal year, the Secretary shall calculate whether the  
25          administrative fee collections were adequate, inad-

1       equate, or in excess of the amounts needed to cover  
2       the actual administrative expenses for such year. To  
3       the extent that the administrative fees were inad-  
4       equate or excessive, the Secretary shall assess a sur-  
5       charge to cover any shortfall, or shall provide a re-  
6       bate from the Fund or reduce future administrative  
7       fees to cover any overcharges.

8       “(h) ANNUAL REPORT.—The Secretary shall, not  
9       later than March 1 of each year, submit to the Committee  
10      on Commerce, Science, and Transportation of the Senate  
11      and the Committee on Public Works and Transportation  
12      of the House of Representatives a report that—

13               “(1) describes the progress of the loan guaran-  
14      tee program authorized by this section;

15               “(2) identifies any problems with such program;  
16      and

17               “(3) describes the loan guarantees made under  
18      this section, including the identity of the air carriers  
19      and other persons receiving loans to which such  
20      guarantees apply.

21       “(i) DEFINITIONS.—As used in this section, the fol-  
22      lowing definitions apply:

23               “(1) AGING AIRCRAFT.—The term ‘aging air-  
24      craft’ means one or more airplanes that were placed

1 into service more than fifteen years prior to the date  
2 of enactment of this section.

3 “(2) AIR CARRIER; UNITED STATES.—The  
4 terms ‘air carrier’ and ‘United States’ have the  
5 meaning such terms have in section 101 of the Fed-  
6 eral Aviation Act of 1958 (49 U.S.C. App. 1301).

7 “(3) FUND.—The term ‘Fund’ means the New  
8 Aircraft Guarantee Program Fund established by  
9 subsection (b).

10 “(4) NEW AIRCRAFT.—The term ‘new aircraft’  
11 means one or more newly manufactured airplanes,  
12 including associated spare parts and engines in-  
13 cluded in the original purchase, that have not been  
14 previously registered or placed into service.

15 “(5) REMOVE FROM SERVICE.—The term ‘re-  
16 move from service’ means to—

17 “(A) eliminate, permanently and irrev-  
18 ocably, aircraft from the fleet of an air carrier  
19 on or after April 15, 1993;

20 “(B) transfer aircraft to another air car-  
21 rier, after April 1, 1993, but before the date of  
22 enactment of this section, for use in common  
23 carriage entirely outside the several States of  
24 the United States; or

1           “(C) remove aircraft permanently and en-  
2           tirely from use in common carriage in the Unit-  
3           ed States.

4           “(6) STAGE 2 AIRCRAFT.—The term ‘Stage 2  
5           aircraft’ means one or more airplanes as defined by  
6           section 36.1(f)(4) of title 14, Code of Federal Regu-  
7           lations, as in effect on the date of enactment of this  
8           section.

9           “(7) STAGE 3 AIRCRAFT.—The term ‘Stage 3  
10          aircraft’ means one or more airplanes as defined by  
11          section 36.1(f)(6) of title 14, Code of Federal Regu-  
12          lations, as in effect on the date of enactment of this  
13          section.”.

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